

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

JAMES ALLEN, JEANNE ALLEN

Plaintiffs,

v.

UNITED STATES OF AMERICA, et  
al,

Defendants.

SA CV 15-00559 AG (JCx)

**PROTECTIVE ORDER GOVERNING**  
**ACCESS TO, HANDLING OF, AND**  
**DISPOSITION OF POTENTIAL**  
**SENSITIVE SECURITY**  
**INFORMATION**

[CHANGES MADE BY COURT TO  
PARAGRAPHS 7.1. 7.2. 7.3]

Upon consideration of the Stipulation filed by the parties requesting that the Court issue a Protective Order in regard to Sensitive Security Information (SSI) and for good cause shown, the stipulated request is GRANTED.

In accordance with Section 525(d) of the Department of Homeland Security Appropriations Act, 2007, Public Law No. 109-295, § 525(d), 120 Stat. 1382, 1355 (Oct. 4, 2006), as reenacted (the “Act”), the Court hereby enters this Protective Order

1 Governing Access to, Handling of, and Disposition of Potential Sensitive Security  
2 Information (the “Order”) exchanged in the above-captioned matter (this “Litigation”).  
3

4 **Scope**

5 1.1 This Order shall govern any Document, information or other material that  
6 contains “Sensitive Security Information” as defined herein, including Documents  
7 potentially containing Sensitive Security Information.  
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9 1.2 Nothing contained herein alters or affects or in any manner changes a  
10 Covered Person’s obligations and duties as set forth in 49 C.F.R. Part 1520.  
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12 **2. Definitions**

13 2.1 Cleared Counsel. The term “Cleared Counsel” shall refer to the two  
14 attorneys representing the Plaintiffs in this Litigation, who are not otherwise authorized  
15 to have access to Sensitive Security Information pursuant to 49 C.F.R. Part 1520, but  
16 whom the Transportation Security Administration (“TSA”) has cleared for access to  
17 specific Sensitive Security Information after determining that such access does not  
18 present a risk of harm to the nation based upon a criminal history records check, terrorist  
19 threat assessment, and evaluation of the sensitivity of the information as mandated by  
20 Section 525(d) of the Act. Cleared Counsel must agree to be bound by the terms of this  
21 Protective Order by signing attached EXHIBIT A.  
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23 2.2 Covered Person. The term “Covered Person” shall refer to any person who  
24 is authorized to have access to specific Sensitive Security Information pursuant to 49  
25

1 C.F.R §§ 1520.7 and 1520.11.

9           a. papers, correspondence, memoranda, notes, letters, reports, summaries,  
10          photographs, maps, charts, graphs, inter-office and intra-office communications,  
11  
12          notations of any sort concerning conversations, meetings, or other communications,  
13  
14          bulletins, teletypes, telegrams, telefacsimiles, invoices, worksheets, transcripts of any  
15          kind (including depositions and Court proceedings), legal briefs, pleadings and papers  
16          (including those filed with the Court) and drafts, alterations, modifications, changes and  
17          amendments of any kind to the foregoing;

b. graphic or oral records or representations of any kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

22           c. electronic, mechanical or electric records of any kind, including, but not  
23 limited to, tapes, cassettes, disks, recordings, electronic mail, films, typewriter ribbons,  
24 word processing or other computer tapes or disks, and all manner of electronic data  
25 processing storage.

1       2.4    Restricted Use Document. The term “Restricted Use Document” shall refer  
2 to any Document that contains Sensitive Security Information.

3       2.5    Sensitive Security Information. The term “Sensitive Security Information”  
4 shall have the meaning set forth in 49 U.S.C. § 114(r)(1)(C), 49 C.F.R. § 1520.1 et seq.,  
5 and as designated in orders issued by TSA pursuant to 49 U.S.C. § 114(r).

6  
7       3.     **Access to Sensitive Security Information**

8       3.1    Access to the Sensitive Security Information under the terms and conditions  
9 of this Order shall be restricted to:

- 10      a. Covered Persons;  
11  
12      b. Cleared Counsel;  
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14      c. Designated court personnel; and,  
15  
16      d. Court reporters retained by the parties for purposes recording depositions and  
17 who have signed a TSA-approved Non-Disclosure Agreement.

18      3.2    If Cleared Counsel seeks access to the Sensitive Security Information  
19 contained in any Restricted Use Document, Cleared Counsel must make a showing to  
20 TSA that they: (a) have a substantial need for relevant Sensitive Security Information in  
21 the preparation of this case, and, (b) are unable without undue hardship to obtain the  
22 substantial equivalent of the relevant Sensitive Security Information by other means. If  
23 TSA determines that the Cleared Counsel seeking access has successfully made such  
24 showings, TSA will grant Cleared Counsel access to the specific Sensitive Security  
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1 Information if TSA determines that such access would not present a risk of harm to the  
2 nation.

3           3.3 Should Cleared Counsel cease representing the Plaintiffs in this Litigation,  
4 for whatever reason, such Cleared Counsel shall no longer be cleared for access to  
5 Sensitive Security Information. Plaintiffs may elect to have a new attorney undergo the  
6 vetting process described in Section 525(d) of the Act in order to obtain access to  
7 Sensitive Security Information in this Litigation.

8           3.4 In the event that Cleared Counsel loses or relinquishes their clearance for  
9 access to Sensitive Security Information, for whatever reason, the former Cleared  
10 Counsel must promptly certify in writing to TSA that all Sensitive Security Information  
11 in their custody has been destroyed or that all Sensitive Security Information in their  
12 custody has been transferred to the new Cleared Counsel in this Litigation.

13           3.5 All Restricted Use Documents subject to this Order in the possession of  
14 Cleared Counsel shall be certified in writing to have been destroyed within 60 days of  
15 termination of this Litigation, including any appellate proceedings.

16          **4. Non-Disclosure of Sensitive Security Information**

17           4.1 Except as provided in this Order, persons authorized to have access to  
18 Sensitive Security Information pursuant to 3.1 of this Order are prohibited from  
19 disclosing, in any manner, or otherwise providing access to, Sensitive Security  
20 Information, however obtained, to any individual or entity.

4.2 Except as provided in this Order, persons authorized to have access to Sensitive Security Information pursuant to Section 3.1 of this Order are prohibited from aiding or assisting any person or entity in disclosing, in any manner, or otherwise providing access to, Sensitive Security Information.

## **5. Handling of Sensitive Security Information**

5.1 All documents subject to this Order shall be marked as “SUBJECT TO SENSITIVE SECURITY INFORMATION (SSI) PROTECTIVE ORDER IN ALLEN V. UNITED STATES OF AMERICA, ET AL., CIVIL ACTION NO. 15-00559 AG (RNBx) (CENTRAL DISTRICT OF CALIFORNIA) THIS RECORD MAY CONTAIN SSI THAT IS CONTROLLED UNDER 49 CFR PART 1520. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTY OR OTHER ACTION.” Documents containing SSI that inadvertently have not been marked as SSI still must be safeguarded against unauthorized disclosure.

5.2 All Restricted Use Documents shall be produced by creating password-protected Adobe PDF files or video files of the authorized Restricted Use Documents and copying them on to a DVD-ROM or encrypted storage device and sending the DVD-ROM or storage device by mail, courier, or overnight delivery service with the password provided only via email.

5.3 Only persons authorized to have access to Sensitive Security Information pursuant to Section 3.1 of this Order may maintain custody of the DVD-ROM or storage

1 device containing Restricted Use Document(s), and such persons have a duty to  
2 safeguard the DVD-ROM or storage device, the Restricted Use Document(s), and the  
3 Sensitive Security Information contained therein, from unauthorized disclosure. When  
4 not in the physical possession of such persons, the DVD-ROM or storage device  
5 containing the Restricted Use Document(s) shall be stored in a secured container, such as  
6 a locked desk or file cabinet.

9       5.4 Persons authorized to have access to Sensitive Security Information  
10 pursuant to Section 3.1 of this Order may create Documents containing Sensitive  
11 Security Information found in a Restricted Use Document, provided that any such  
12 Document is secured in the same or equivalent manner, to the same or equivalent extent,  
13 and with the same restrictions on access as the DVD-ROM or storage device containing  
14 the Restricted Use Document as set forth in this Section 4.

17       **6. Use of Sensitive Security Information in Depositions and Examinations**

18       6.1 Sensitive Security Information that is authorized for production pursuant to  
19 this Order may be used and/or elicited during the deposition or examination of a  
20 witness, provided such witness is a Covered Person, subject to the following restrictions:

22           6.1.1 Only the individuals identified in Section 3.1 of this Order may be  
23 present in the room when such Sensitive Security Information is used and/or elicited.

25           6.1.2 The court reporter shall secure the Restricted Use Documents in the  
26 same manner, to the same extent, and with the same restrictions on access prescribed in  
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this Order.

6.2 The court reporter who records a deposition shall promptly submit the deposition transcript to TSA for review. TSA shall promptly complete a review within ten business days of receipt to determine if a deposition transcript contains Sensitive Security Information. To the extent that TSA determines, upon review of the deposition transcript, that the transcript contains Sensitive Security Information that is appropriate for release pursuant to this Order, TSA shall authorize the transcript for release to counsel for Covered Persons and to Cleared Counsel.

## **7. Use of Sensitive Security Information in Motions and Court Proceedings**

7.1 Any Party who wishes to use a Restricted Use Document or the Sensitive Security Information contained therein in connection with a motion or other submission to this Court must submit the Restricted Use Document and any pleadings, motions or other papers containing Sensitive Security Information for filing under seal in accordance with Local Rule 79-5. Where possible, only the portions of the filings that contain Sensitive Security Information shall be submitted for filing under seal in accordance with Local Rule 79-5.

7.2 All court proceedings, or portions thereof, in which Sensitive Security Information may be disclosed, shall be closed to the public absent further order of the Court. If there is a possibility that Sensitive Security Information may be disclosed during any portion of the trial, such as the testimony of a particular witness, the

courtroom shall be closed to the public for that portion absent further order of the Court.

7.3 Cleared counsel may use SSI disclosed to them in this Litigation only for the purposes of the Litigation. SSI may not be further disseminated, including to a jury, except with written permission from TSA, absent further order of the Court.

## **8. Dispute Resolution**

8.1 To the extent there is a dispute between the Parties concerning whether information constitutes Sensitive Security Information, Cleared Counsel shall refer the matter to TSA for a determination by the close of discovery. If Cleared Counsel does not agree with TSA's determination it shall request in writing that TSA issue a final order pursuant to 49 U.S.C. § 114(r) designating such information as Sensitive Security Information. TSA final orders concerning the designation of information as Sensitive Security Information are reviewable exclusively in the United States Court of Appeals in accordance with 49 U.S.C. § 46110.

8.2 To the extent there is a dispute concerning whether specific redacted or withheld Sensitive Security Information should be authorized for production under this Order and Section 525(d) of the Act, the Parties shall meet and confer in an attempt to resolve the dispute consensually. For all unresolved disputes concerning whether specific Sensitive Security Information should be authorized for production, Cleared Counsel may submit the dispute to the appropriate Court as follows: TSA final determinations concerning granting or denying access to specific Sensitive Security Information based

1 upon relevance, substantial need, and the ability to obtain information without undue  
2 hardship, are reviewable by this Court; TSA final orders concerning whether a risk of  
3 harm to the nation is presented by granting access to specific Sensitive Security  
4 Information, either because of the sensitivity of the information or the results of the  
5 criminal history records check and terrorist threat assessment as set forth in Section  
6 525(d) of the Act, are reviewable exclusively by the Court of Appeals in accordance with  
7 49 U.S.C. § 46110.

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9. **Unauthorized Disclosure**

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11 9.1 If Sensitive Security Information is disclosed other than as authorized by  
12 this Order, the person responsible for the unauthorized disclosure, and any other person,  
13 firm or entity that is subject to this Order and learns of the unauthorized disclosure, shall  
14 immediately bring such disclosure to the attention of TSA.

15

16 9.2 The person responsible for the unauthorized disclosure shall make every  
17 effort to obtain the return of the Sensitive Security Information (including, without  
18 limitation, from the person to whom the unauthorized disclosure was made and from any  
19 other person to whom Sensitive Security Information was transmitted as a direct or  
20 indirect result of the unauthorized disclosure) and to prevent further disclosure on its  
21 own part or on the part of any person to whom the unauthorized disclosure was made.

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23 9.3 In addition to any other remedies that are available under law, any person,  
24 firm or entity responsible for an unauthorized disclosure of Sensitive Security

1 Information protected by this Order may be subject to a civil penalty by TSA of up to  
2 \$50,000 per violation, and all other remedies provided under 49 C.F.R. § 1520.17.  
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4       9.4 In the event that TSA determines that Cleared Counsel has intentionally,  
5 willfully or recklessly disclosed Sensitive Security Information in violation of this Order,  
6 TSA may, in the exercise of its sole discretion, and in addition to the remedies  
7 authorized above in paragraph 9.3, revoke such Cleared Counsel's clearance for access  
8 to Sensitive Security Information. Furthermore, TSA may consider such intentional,  
9 willful or reckless disclosure in determining whether granting access to Sensitive  
10 Security Information to any member of a firm or entity that employed such Cleared  
11 Counsel, and/or to the Party whom that Cleared Counsel represents in this Litigation.  
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13       **10. Reservation of Rights**

14       10.1 In the event that TSA determines that a Document containing Sensitive  
15 Security Information, or portion thereof, was inappropriately produced, TSA reserves the  
16 right to remove the Document, or portion thereof, from this Litigation, and to take any  
17 other measures necessary to protect the Sensitive Security Information at issue.  
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10.2 This Order is without prejudice to the rights of any party to make any objection to discovery or use of SSI, or documents that may contain SSI, permitted by the Federal Rules of Civil Procedure, the Federal Rules of Evidence or any statute, regulation, or other authority.

IT IS SO ORDERED.

Dated this 21st day of July, 2016.

/s/

Honorable Jacqueline Chooljian  
UNITED STATES MAGISTRATE JUDGE

1                   **EXHIBIT A**  
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1                   **AGREEMENT TO BE BOUND BY THE PROTECTIVE ORDER**  
2                   **REGARDING SENSITIVE SECURITY INFORMATION**  
3                   **ALLEN, ET AL V. UNITED STATES, ET AL, CASE NO. 15-CV-00559 AG (JCx)**

4 I reside at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_.  
5 My present employer is \_\_\_\_\_. My present occupation is \_\_\_\_\_.  
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7 I understand that I will have access to and will be examining documents that contain protected  
8 sensitive security information as defined in 49 U.S.C. § 114(r) and 49 C.F.R. pt. 1520. I have read and  
9 understand the Stipulation and Protective Order Regarding Sensitive Security Information covering  
10 these documents, and pledge to comply with all the provisions of that Protective Order. Furthermore, I  
11 certify that I am a Cleared Counsel as defined in Paragraph 2.1 of the Protective Order.

12 I will maintain all Restricted Use Documents, as defined in Paragraph 2.4 of the Protective  
13 Order, according to all the provisions of the Protective Order.  
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16                   DATE

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18                   SIGNATURE

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20                   FULL NAME